



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D. C. 20536

FILE: [REDACTED] Office: Los Angeles

Date: JAN 11 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT: [REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Terrance M. O'Reilly*

For Terrance M. O'Reilly, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

JAN 11 2000 - DIR 103

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole in 1977. He was found to be inadmissible to the United States under §§ 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(B), for having been convicted of a crime involving moral turpitude and for having been convicted of two or more crimes. The applicant married a United States citizen on August 17, 1992 and is the beneficiary of an approved immediate relative visa petition. The applicant seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside with his spouse in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his United States citizen wife and denied the application accordingly.

On appeal, counsel argues that the applicant's marriage is a strong and vital one and his wife will suffer extreme hardship stemming from their separation. Counsel submits an undated psychological evaluation of the applicant's wife with the appeal filed on November 16, 1995 which indicates that his wife has been in therapy since July 13, 1995. The evaluation indicates that the applicant's wife has made great gains in the vocational area, is aspiring to finish with a Bachelor of Science Degree, is helping troubled youngsters and has overcome many obstacles in her life. Counsel states that the applicant and his wife are the legal guardians of the applicant's 14 year old niece and provide her with the necessary guidance, love and a stable two-parent home environment.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

(B) MULTIPLE CRIMINAL CONVICTIONS.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a) (2) (A) (i) (I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A) (i) (I),...if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) ...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated;  
or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or

conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

The record reflects the following regarding the applicant:

(1) On October 11, 1983, the applicant was convicted of the crime of voluntary and involuntary manslaughter. He was sentenced to 2 years in prison.

(2) On August 7, 1986, the applicant was convicted of the crime of Grand Theft. He was sentenced to 16 months in prison.

(3) On April 11, 1988, the applicant was convicted of the crime of Burglary. He was sentenced to 2 years in prison.

(4) On May 24, 1989, the applicant was convicted of the crime of Burglary. He was sentenced to 3 years in prison plus and additional 1 year for enhancement of prison terms.

Here, fewer than 15 years have elapsed since the applicant committed his last violation. Therefore, he is ineligible for the waiver provided by § 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under § 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a § 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

Matter of Goldeshtein, 20 I&N Dec. 382 (BIA 1991), (overruled on other grounds) held that an application for discretionary relief, including a waiver of inadmissibility under § 212(h) of the Act, may be denied in the exercise of discretion without express rulings on the question of statutory eligibility. In that matter, the immigration judge found that there may be extreme hardship in that

particular case but denied the waiver request as a matter of discretion because the applicant's offense was "very serious."

The applicant has committed several very serious offenses over a period of time. As a result of the commission of those violations, the applicant does not warrant the favorable exercise of the Attorney General's discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.